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Seattle, Washington 98122

January 21, 2004

Diane Sugimura, Director
Seattle Department of Planning and Development
700 Fifth Avenue, Suite 2000
Seattle, WA 98104-5070

RE: Environmentally Critical Areas Update Recommendations

Dear Ms. Sugimura and DPD Staff,

Livable Communities Coalition is a broad-based coalition of neighborhood, affordable housing, transportation, land-use, and environmental advocates in the King County region. We advocate for and promote healthy, equitable, and sustainable communities, believing in protection of and access to clean water and air, open space, forests, farmlands and wildlife habitat.

Chapter 25.09, Regulations for Environmentally Critical Areas, is an essential tool in protecting and maintaining livable communities and supports the Mayor's priority of building healthy and environmentally sustainable communities; this update gives us the opportunity to make necessary improvements. With these goals in mind, we offer the following recommendations:

1. STRENGTHEN WETLAND PROTECTION

- *Wetlands smaller than 100 ft² need protection.* The exemption of wetlands smaller than 100 ft² (SMC 25.09.160(A)) should be eliminated, since such small

and, in many cases, isolated wetlands provide important functions. Filling these wetlands without proper mitigation will clearly result in a net loss of functions and values and is, therefore, contrary to case law^{1,2} and to the Growth Management Act (GMA)³.

- *Fifty foot wetland buffers are inadequate to protect wetland functions and values.* SMC 25.09.160(B)'s 50 foot buffers should be increased to adequate distances given in the scientific literature. As required by Washington State, "Best Available Science" (BAS) must be incorporated into the update of all Critical Areas Ordinances. The Washington State Office of Community Development (OCD) has compiled an impressive (but not comprehensive) list of BAS citations⁴. We also suggest that criteria from State of Washington Department of Community Trade and Economic Development's (CTED's) *Example Code Provisions for Designating and Protecting Critical Areas*⁵ be adopted.
- *Impacts to wetlands are certain with current code criteria.* SMC 25.09.160(A) does not adequately address protection for Seattle's wetlands, particularly riparian and tidal wetlands. Also, mitigation should follow CTED's *Example Code Provisions* prioritized hierarchy of:
 - i. Avoiding the impact altogether by not taking a certain action or parts of an action.
 - ii. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.
 - iii. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
 - iv. Reducing or eliminating the impact over time by preservation and maintenance operations.
 - v. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments.⁶

¹ Pilchuck Audubon Soc'y v. Snohomish Cty [Pilchuck II], CPSGMHB Case No. 95-3-0047c, Final Decision and Order P. *21, 1995 WL 903206, *21 (December 6, 1995).

² Tribes v. Snohomish County [Tulalip], CPSGMHB Case No. 96-3-0029, FDO, January 8, 1997, 13.

³ RCW 36.70A

⁴ Washington State Office of Community Development. March 2002. Citations of Recommended Sources of Best Available Science For Designating and Protecting Critical Areas
http://www.cted.wa.gov/uploads/BAS_Citations_Final.pdf

⁵ State of Washington Department of Community Trade and Economic Development. *Example Code Provisions for Designating and Protecting Critical Areas*.
http://www.cted.wa.gov/uploads/Appendix_A.pdf.

⁶ Ibid.

- *Wetland mitigation ratios are far too low.* SMC 25.09.160(A) requires a 2:1 wetland mitigation ratio, yet such a ratio will not replace functions and values of impacted wetlands since the majority of mitigation projects usually fail. This will result in a net loss of wetland functions and values. The *Example Code Provisions* suggest a ratio of up to 6:1⁷.

2. STRENGTHEN RIPARIAN AREA PROTECTION

- *Class A and B riparian corridor buffers are far too narrow to protect the functions and values of riparian areas.* SMC 25.09.140 requires buffers of 50 and 25 feet, respectively; Class A buffers are inadequate to protect salmon habitat and other wildlife functions, while Class B buffers provide few, if any, riparian habitat functions.
- *Provisions and incentives for stronger buffers are necessary for redevelopment.* We encourage such provisions and refer the City to the *Example Code Provisions*⁸ for ideas.

3. CLARIFY LANGUAGE OF FISH AND WILDLIFE HABITAT CONSERVATION AREAS

Fish and Wildlife Habitat Conservation Area language is unclear and needs greater detail. While designated Fish and Wildlife Conservation Area habitats definitions are comprehensive (SMC 25.09.020) and we strongly support their inclusion and protection, such protection is unclear. Clarification and drafting of specific language is necessary to ensure protection of fish and wildlife habitat functions and values. Again, we suggest *Example Code Provisions*⁹.

4. ALLOW DENSITY CALCULATIONS TO INCLUDE ECAS

Density calculations should include ECAs. In order to fairly balance property owner concerns about environmentally critical area buffers—and to provide more appropriate residential densities—we suggest that SMC 25.09.240(D) be amended to allow ECAs to be included in residential density calculations. Although SMC 25.09.260 allows for recovery of residential density by way of a conditional use permit process, this added tool is preferred.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

5. RETAIN ELEMENTS OF THE CURRENT CODE THAT OFFER STRONG PROTECTION

We support the enforcement provisions included in SMC 25.09.400 (Violations and penalties), connecting language to SEPA (SMC 25.09.360), and particular concerns with the dangers of developing in landslide-prone areas (SMC 25.09.345). These and other solid efforts demonstrate Seattle's commitment to protection of environmentally critical areas; we hope you use this opportunity to strengthen such protections and set a superior example for other municipalities in the region.

We thank you for the opportunity to submit our comments. Feel free to contact us with any questions.

Sincerely,



John Mauro
Director